

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
v. Plaintiff,) Criminal Action
DZHOKHAR A. TSARNAEV, also) No. 13-10200-GAO
known as Jahar Tsarni,)
Defendant.)

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

EXCERPT OF SENTENCING TRANSCRIPT

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Wednesday, June 24, 2015
1:37 p.m.

Marcia G. Patrisso, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

1 APPEARANCES:

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On Behalf of the Defendant

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PROCEDINGS

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3 THE CLERK: All rise for the Court.

4 (The Court enters the courtroom at 1:37 p.m.)

5 THE CLERK: For a continuation of the Tsarnaev
6 sentence. Be seated.

7 THE COURT: Ms. Clarke?

8 MS. CLARKE: Thank you, your Honor. Before
9 we -- before Mr. Tsarnaev addresses the Court, I wanted to
10 address the Court with regard to a few matters. There have
11 been comments over time with regard to Mr. Tsarnaev lacking
12 remorse and lacking an apology and for being sorry for his
13 actions. And I think it's incumbent upon us to let the Court
14 know that Mr. Tsarnaev offered to resolve this case without a
15 trial as far back as October of 2013, and in January of 2014
16 provided a letter of apology. But he will also speak today and
17 address those issues as well. It is the government's right to
18 have refused the offer of settlement and the letter, but we're
19 here with legal issues to address.

20 Mr. Weinreb asked that the Court enter a restitution
21 order today. I would note that the presentence report
22 indicated that the government would be providing a date by
23 which it would submit information with regard to restitution.
24 As a result, we filed nothing in that regard, anticipating the
25 litigation would be later.

1 We do need to note to the Court that we will be
2 objecting to the entry of an order of restitution on the
3 grounds of *Apprendi*. I know that that's speaking Greek, but
4 the Court understands the language. It is a live and debatable
5 issue, and we think that the Court should not impose the order
6 of restitution. The same goes for forfeiture.

7 Your Honor, the government filed a forfeiture motion
8 on the 19th of June. It was our understanding that we had two
9 weeks to respond to that; that it would not be entered before
10 we could respond. The same *Apprendi* argument will apply to the
11 forfeiture order, and we ask that the Court defer until we can
12 raise that appropriately before the Court.

13 It is my understanding that the recommendation of the
14 government, although I didn't hear it -- but the recommendation
15 of the government and probation, I believe, is that there be no
16 fine imposed because of the lack of ability to pay. We do
17 understand that the Court would be imposing special assessments
18 on each of the 30 counts in the amount of \$100 each for a
19 \$3,000 total. We have discussed with the government how
20 that -- how the judgment should read in terms of the
21 responsibility to pay it, as we all know that Mr. Tsarnaev will
22 be serving -- facing executions -- awaiting for the execution
23 of his death sentences and will not be having, you know,
24 income.

25 We would ask that the Court -- we have some language

1 for the Court to include in the judgment. If the Court wants
2 me to say it orally or simply provide it to the Court
3 afterwards, it regards how it -- how the assessment is
4 collected from wages. The language would be "Shall be
5 collected from prison wages, if any are earned, and not from
6 funds deposited in the commissary account."

7 If there is some concern about overages in the
8 commissary account, which we do not ever envision but the
9 government has hypothesized about, we would ask that the Court
10 allow there to be a minimum below which the commissary account
11 could not be taken. As the Court knows, that is for some very
12 basic necessities.

13 THE COURT: Let me just say to that point, I'm
14 inclined to the latter; that is, that there be some floor below
15 which assessments could not be drawn. I don't know whether the
16 Bureau of Prisons has any regular practice with respect to such
17 matters and whether there might already be a regulation that
18 provided that.

19 MR. WEINREB: I believe there is, your Honor. I
20 believe that the Bureau of Prisons normally takes the position
21 that the first \$75 -- basically, \$75 per month of a defendant's
22 commissary monies are exempt from the payment towards any fines
23 or special assessments, restitution and so on, and that that is
24 pretty standard for --

25 THE COURT: Well, accepting your representation

1 without researching it, I think that's adequate and we can rest
2 on that, just as to that point.

3 MS. CLARKE: And I could -- well, we think there
4 should be a slightly higher threshold. But I could also
5 provide the Court with a judgment where language was used and
6 that has been complied with.

7 THE COURT: Well, no, I think we've resolved that. I
8 think that -- it's amendable. If it turns out to be an issue
9 of some kind --

10 MS. CLARKE: A clear error.

11 THE COURT: -- we can readress it.

12 MS. CLARKE: The other issue I believe was addressed
13 in the objections in the presentence report, and that is the
14 applicability of supervised release to any sentences other than
15 those that are a term of years. In this case, the term of
16 supervised release is, you know --

17 THE COURT: I'm not going to impose supervised release
18 in this case. It's unnecessary as a practical matter in light
19 of the other structural sentence I will announce.

20 MS. CLARKE: Thank you, your Honor.

21 The other area is what the government filed last night
22 and the proposed language for the judgment following the
23 Statute 3596 and then the C.F.R.s. The government filed
24 proposed language, and then amended it with a revised proposed,
25 and we don't -- we think that the Court needs more thought than

1 that and we should respond. The government has identified
2 Indiana as the state that the Court should identify in the
3 judgment where the execution will take place.

4 I know that the Court is probably aware of Judge
5 Wolf's analysis in *Sampson*, and it is more of a balancing act
6 than that. That seems to be a bureaucratic desire on behalf of
7 the government which, frankly, flies in the face of the
8 government's venue arguments in this case. And Judge Wolf in
9 *Sampson* noted that it's a -- I can just quote the language.
10 "The execution of a human being by the state is perhaps the
11 most solemn and significant act a government can perform. It
12 should not be reduced to an invisible bureaucratic function.
13 There is, therefore, a strong public interest in the execution
14 being as accessible as possible to the people most interested
15 in it and impacted by it." And as a result, Judge Wolf
16 identified the state of New Hampshire because Massachusetts
17 does not have a manner of execution.

18 We do have some language. I think that probably the
19 safest course of action for the Court is to adopt the judgment
20 language that Judge Wolf used in *Sampson*. And we have that and
21 can submit it to the Court. It lays out the language that
22 should be included in the judgment with regard to execution.

23 THE COURT: Do you want to respond to that?

24 MR. WEINREB: Your Honor, the defense's proposal, as I
25 understand it, essentially tracks the language of the

1 regulation and adds in this other language based on Judge
2 Wolf's opinion regarding New Hampshire. The regulation is not
3 what controls in this case; it's the statute. I believe it's
4 18 U.S.C. 3596, is what specifies what the -- how -- I've got
5 to find the provision --

6 MS. CLARKE: I've got it.

7 MR. WEINREB: -- the implementation of a sentence of
8 death, and it explains the legal requirement.

9 The statute -- the regulation simply directs the
10 government to submit a proposed order. It's not a direction to
11 the Court. And in any event, to the extent that it's not
12 consistent with the statute, the statute controls.

13 The language that the government proposed in its
14 revised motion which we submitted last night is language that
15 has been worked out over time among various interested parties
16 who actually are involved in the implementation of the
17 sentence - the BOP, the U.S. Marshal's Service among them - and
18 is what the government normally recommends in all of these
19 cases. And it is typically, to our understanding, of course,
20 adopted in cases. It is consistent with the statute and it is
21 a -- it both fulfills the statutory requirements and is a
22 practical set of instructions that the government is familiar
23 with and will facilitate the orderly execution of the sentence.

24 MS. CLARKE: Well, Judge, I'm not sure that that's
25 exactly right. And 3596 provides "If the law of the state does

1 not provide for implementation of a sentence of death, the
2 Court shall" -- the Court, not the government or the Bureau of
3 Prisons -- "designate another state, the law of which does
4 provide for the implementation of a sentence of death, and the
5 sentence shall be implemented in the latter state in the manner
6 prescribed by law."

7 So it is a Court determination of which state will
8 implement the sentence of death. And Judge Wolf went through a
9 balancing determination in *Sampson* and determined, as I read
10 one of the reasons -- part of the reasons was because of the
11 people most affected need to have access to the execution, and
12 that it is not just a bureaucratic administrative act but a
13 very solemn, profound act by our government.

14 THE COURT: Okay. This is not an issue that was
15 raised or briefed. It was not formally presented. I did spend
16 some time thinking about it nonetheless, and I think the
17 government's suggestion is an acceptable one. Indiana is the
18 location of the institution, Terre Haute, which is the federal
19 death row, as they say in casual language. And I think that
20 makes an appropriate default position. So I will accept the
21 government's recommendation on that.

22 MS. CLARKE: Your Honor, I have a couple of
23 ministerial matters that do not affect the imposition of
24 sentence and can be delayed. I think Mr. Tsarnaev is prepared
25 to address the Court.

1 THE COURT: All right, Mr. Tsarnaev.

2 MS. CLARKE: May I move the microphone?

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C E R T I F I C A T E

3 I, Marcia G. Patrisso, RMR, CRR, Official Reporter of
4 the United States District Court, do hereby certify that the
5 foregoing transcript constitutes, to the best of my skill and
6 ability, a true and accurate transcription of my stenotype
7 notes taken in the matter of Criminal Action No. 13-10200-GAO,
8 United States of America v. Dzhokhar A. Tsarnaev.

10 /s/ Marcia G. Patrisso
11 MARCIA G. PATRISSO, RMR, CRR
Official Court Reporter

13 Date: 7/8/15